WILTSHIRE COUNCIL

EDUCATIONAL DIRECT PAYMENT AGREEMENT

1. This agreement relates to a direct payment which will enable you to provide an educational service for your child in accordance with the outcomes identified in the Education, Health and Care Plan.

**Payment Details**

1. The accompanying letter from Wiltshire Council sets out the amount of the Direct Payment and when it will be paid.
2. Direct Payments are made either monthly in advance or every six months, by 1 April and by 1 October each year. If paid twice yearly the first payment will pro rata, for the period up to the next 6-monthly payment date.
3. Payments will be made based on the number of days in the month on which the service is needed, so that the amount you receive may fluctuate slightly from one 6-monthly period to the next.

**How we will pay the money to you**

1. Regular payments direct into a Direct Payment bank account (at the bank or building society of your choice) set up specifically for this purpose.
2. This account must be in the name of the person receiving the Direct Payment.
3. One-off payment: if the plan provides for a one-off payment, the Council can arrange to pay this one off payment into this account.

**Banking Service**

1. The Council contracts with a support service provider who will provide advice, support and a banking service for all Direct Payment users who have difficulty in opening or maintaining a bank account.
2. When you use the banking service you will be agreeing for the Direct Payment to be paid directly into the support service provider’s bank account.
3. Use of the banking service will be subject to an agreement made between the support service provider and yourself.
4. There is currently no charge made for using this service.
5. The support service provider and Wiltshire Council will decide if you can access the banking service based on your ability to manage the financial arrangements involved in receiving a Direct Payment.
6. Should you use the banking service you will remain responsible for the use of the Direct Payment, i.e. you will direct who is to be paid.

**Using your Direct Payment**

1. In using the Direct Payment you will be agreeing to all the terms and conditions set out in this agreement and in particular the following:
2. I agree to use the payment solely in order to pay for services to meet those needs that the Council has agreed to meet, as set out in my child’s Education, Health and Care Plan.
3. I agree to repay the Direct Payment or any part of it if Wiltshire Council is satisfied that it has not been used to meet those needs.
4. I understand and accept that it is my responsibility to make arrangements to secure appropriate services for my child in order to meet those needs.

(4) I understand I will be contracting for services in my own name and that unless I engage a service provider (for example, an agency) I will be by law become an employer, in which case I will become responsible for recruiting, supervising and monitoring staff.

(5) I agree to comply with all legal requirements that may arise in making such arrangements. In particular, if I employ staff I will comply with any laws relating to employment, tax and national insurance, insurance, immigration, health and safety and will ensure staff are adequately trained. I am aware that a support service provider will be able to provide advice and assistance on these matters.

(6) I understand that if I employ staff Wiltshire Council requires that I should ask for appropriate checks to be made through the Disclosure and Barring Service. I understand that Wiltshire Council can process these checks on my behalf.

(8) I will not use the Direct Payment to pay for a service from my spouse/partner, wherever they live, or from a close relative of mine (or their spouse or partner) living in my household without permission in writing from Wiltshire Council. I understand that this will not be granted unless Wiltshire Council is satisfied that securing the service from such a person is the only way to meet satisfactorily my child’s need for that service. Otherwise I can purchase a service from anyone I like, including close relatives of mine who live outside my home.

(9) I understand that if I pay for a service from a relative or a friend I will be employing him/her, just as much as if I was employing a person I did not know who had answered an advert to be a carer for my child.

(10) I understand that Wiltshire Council requires the use of cheque, standing order and direct debit, (not cash) to make payments for services in order to facilitate auditing of the use of the Direct Payment. Where there is no alternative to a cash payment, a receipt must be obtained for the transaction wherever practicable and in any event the nature of the payment recorded.

1. There is support available to help you to manage the Direct Payment. The Council contracts with a support service provider who can provide support for those who choose to use the Direct Payment. You will still be held accountable for the way in which the Direct Payment is used.

**Being an Employer**

1. If you choose to use the Direct Payment to employ personal assistants or carers (rather than engage a service provider such as an agency) you will become an employer and will be responsible for the aspects of employment law involved in this, which include making sure that any tax and National Insurance payments are made and planning for other payments that may arise relating to holidays or sickness. You can get support from the support service provider to help you with this.
2. HM Revenue and Customs does not usually consider personal assistants and carers to be self-employed. If the person concerned claims he/she is self-employed you must contact the HMRC who will advise you. If he/she starts work before you receive advice you must use a temporary Pay As You Earn scheme. The support service provider can help you with this.
3. When you use the Direct Payment to employ someone you must ensure you take out full insurance cover for Employer’s Public Liability Insurance, so that you will have insurance in place to meet any potential employment claims that may be brought in the future. The Council can provide insurance cover through an approved company, the cost of which is not deducted from the Direct Payment you receive. If you would like help or advice on this subject please contact the support service provider.
4. The Council requires you to obtain, through itself, a Disclosure and Barring certificate in respect of any personal assistant or carer employed or engaged by you. The support service provider can help you with this.
5. You must ensure you comply with Home Office immigration regulations when employing a personal assistant or carer. The support service provider can explain these to you in order to ensure you meet their requirements.
6. You must ensure you comply with health and safety regulations. The support service provider can explain these to you in order to ensure you meet their requirements.
7. You must not start employing tutors or assistants before the start date, as defined by clause 6 of this Agreement (above), as the Direct Payment will only fund the service from that date. If you feel that this will cause you a problem you should contact your SEND Lead Worker in the first instance.

**Change of Circumstances**

1. You must notify Wiltshire Council as soon as possible if your child’s circumstances or needs change. This may include changes to his/her financial or personal situation or changes in the nature of the services you are paying for.
2. Eligibility for a service can change and you may in time no longer qualify for a Direct Payment in respect of your child. If this happens you may have bills for services that still need to be paid. These bills must be paid within 30 days. If and when the Direct Payment account is no longer required, all the remaining funds in the account must be returned to the Council by cheque or BACS along with the final bank statement and user returns. The money should be returned within 14 days of settling any outstanding payments. If you need help to do this then support can be provided on request.
3. If your child goes into hospital or has another emergency, funding will continue for up to 8 weeks. This will allow you to pay tutors or assistants for up to 4 weeks or fund any extra support you may need in the short-term.
4. The Direct Payment will be stopped if you stay in hospital for longer than 8 weeks. Any unused funds may be reclaimed by the Council at your next review or re-assessment.

**Telling us how you spend the Direct Payment**

1. Wiltshire Council is accountable for the public money it manages, which includes money used to fund Direct Payments. It therefore needs to make conditions about how you manage a Direct Payment and what you use it for.
2. Payments from the Direct Payment account may only be made by cheque, standing order, electronic transfer or direct debit. Cash or cash-cards must not be used unless for approved purposes.
3. The Direct Payment account must not become overdrawn.
4. You cannot transfer any money from that account to another account of yours.
5. The Direct Payment account must only be used to receive Direct Payments and to pay for services to meet needs that the Council has agreed to meet and not for any other purpose. If there is any expenditure on other matters the Council may require you to make a repayment.
6. You must obtain bank statements every month. At the annual review/re-assessment the Council will ask to see copies of the bank statements to ensure the Direct Payment is being used in line with the Education, Health and Care Plan. The Council may ask you to submit bank statements as part of any audit of Direct Payment accounts
7. You need to keep a record of all payments you make from the Direct Payment account. This includes any wage-slips if you are employing someone. You need to keep all invoices and receipts in order to show what you have spent money on. The Council can ask to see your records for the Direct Payments at any stage but only requires you to send it copies of your records every 3 months. Failure to comply with this requirement may result in Direct Payments being stopped.

**Looking at how things are working**

1. The Council will review how everything is working every 6 months unless more frequent reviews are appropriate.
2. You may ask for a review of your child’s needs if you think his/her needs have changed and that the Direct Payment does not provide enough funds to pay for the services needed. A review will be carried out annually but meanwhile, if you think the needs have changed significantly, you should contact your child’s SEND Lead Worker.
3. The purpose of a review is to look again at your child’s needs in order to make sure the Education, Health and Care Plan continues to be appropriate. If it is determined that needs have changed then a new plan will be developed, which may result in a change to the amount you receive as a Direct Payment.
4. The review/re-assessment will also look at how well you are managing the Direct Payment. The Council will need to ensure you are doing all you have agreed to do when you decided to receive a Direct Payment.
5. The review will look at the money you have in the Direct Payment account.  Any unspent money that has accrued will be reclaimed by the Council unless you already have permission to retain some or all of this or you can show it is needed to pay any sum due before the next Direct Payment is made, for example a tutor’s or assistant’s wages, or you can show it is needed as a contingency fund, for example in the event you need to make a redundancy payment to a tutor or assistant.  In any event the most you will be able to retain in your account is 20% of the annualised value of the Direct Payments.
6. If you have problems managing the Direct Payment the Council will work with you to solve them. If they cannot be addressed within 3 months the Council may decide to suspend or stop altogether the Direct Payment and meet your child’s needs in another way. If the Direct Payment is to be stopped the Council will let you know, in writing, setting out its reasons for doing so, at least one month before this happens.
7. If you make a genuine mistake the Council will work with you to try to sort it out. However, if you do not keep to the terms and conditions of this agreement the Council may suspend or stop altogether the Direct Payment. This will only happen after it has carried out a review. Some or all of the payments made to you may be reclaimed and your child’s needs will be met in other ways.
8. Where there is evidence of fraud or misuse of the Direct Payment the Council reserves the right to stop the Direct Payment straightaway. It will then meet your child’s needs in other ways. The Council may take action to reclaim and/or recover any monies paid by means of a Direct Payment. You may also be liable to criminal prosecution.

**Personal Injury Claims**

1. If your child’s need for services from Wiltshire Council has arisen as a consequence of a personal injury suffered by him/her, the following additional conditions apply:

(a) You must immediately let the Council know the status of your child’s claim at the date of this agreement. This means that you must tell the Council the date of the accident, the name of the defendant, the name of the solicitor dealing with the claim, whether proceedings have been issued, the position on liability and whether there has been an interim or final compensation payment or award.

(b) You must keep the Council informed of the progress of the personal injury claim. The Council needs to know if, for example, the defendant is wholly to blame for the injury, in order for it to decide whether it should continue to pay for the services or whether the defendant or his/her insurers should do so instead.

**What to do with this agreement**

1. The Council wishes to ensure that you are able to gain as much independence and choice through the use of the Direct Payment as possible.
2. It is important that you are clear about what you have to do and what you can expect the Council to do to make sure the arrangements work well.
3. If you have any questions or concerns about this agreement, or any aspect of the Direct Payment, please do not hesitate to contact your SEND Lead Worker.

**Details of your Direct Payment account**

1. When you sign this agreement you are giving permission to your bank or building society to give Wiltshire Council information about the Direct Payment account.
2. At the time you sign this agreement you must tell the Council if you have any debts, County Court or other judgments or if you have been declared bankrupt at any time.

**Signatures**

**THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_ 20\_\_**

SIGNED BY – the person receiving the money for the Direct Payment or trustee, where the money will be paid into a trust.

Signature................................................ PRINT NAME…………………………………………

Date ....................................... Relationship to child………………………………………………..

**Please sign both copies of this Agreement and return one to the Council, to your SEND Lead Worker at the address on the accompanying letter**